

**F I L E D**

Clerk of the Superior Court

DEC 11 2006

By: K SANDOVAL, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

Coordination Proceeding  
Special Title (Rule 1550(b)):

JUDICIAL COUNCIL COORDINATION  
PROCEEDING NOS. 4221, 4224, 4226 and  
4228

The Honorable Ronald S. Prager  
Coordination Trial Judge

**NATURAL GAS ANTI-TRUST CASES I,  
II, III & IV**

**[PROPOSED] JUDGMENT, FINAL  
ORDER, AND DECREE GRANTING  
FINAL APPROVAL TO CLASS ACTION  
SETTLEMENT WITH DYNEGY  
DEFENDANTS**

Date: December 11, 2006  
Time: 10:00 a.m.  
Courtroom: Department 71

This Document Relates To:

**THE FOLLOWING PRICE INDEXING  
CASES ONLY:**

*Team Design, et al. v. Reliant Energy, Inc., et  
al., Los Angeles County Superior Court Case  
No. BC294113*

*Uyeda, et al. v. Centerpoint Energy, Inc., et al.,  
San Diego County Superior Court Case No.  
GIC810580*

*Oberti Wholesale Foods, Inc. v. Encana  
Energy Services, Inc., et al., Alameda County  
Superior Court Case No. RG03098109*

578888.1

- 1 *Shanghai 1930 Restaurant Partners, L.P. v.*  
2 *EnCana Energy Services, Inc., et al., San*  
3 *Francisco County Superior Court Case No.*  
4 *CGC-03-420785*
- 5 *A.L. Gilbert Co. v. Coral Energy Resources,*  
6 *L.P., et al., Alameda County Superior Court*  
7 *Case No. RG03097835*
- 8 *Brown v. Encana Energy Services, Inc., et al.,*  
9 *Alameda County Superior Court Case No.*  
10 *RG03099036*
- 11 *Podesta v. EnCana Energy Services Inc., et al.,*  
12 *San Joaquin County Superior Court Case*  
13 *No. CV021175*
- 14 *Lois the Pie Queen v. EnCana Energy Services*  
15 *Inc., et al., Alameda County Superior Court*  
16 *Case No. RG03104286*
- 17 *Vittice Corp. v. EnCana Corp., et al., Alameda*  
18 *County Superior Court Case No. RG04137797*
- 19 *Benscheidt, et al. v. AEP Energy Services, Inc.,*  
20 *et al., San Diego County Superior Court Case*  
21 *No. GIC825011*
- 22 *Older v. Sempra Energy, et al., San Diego*  
23 *County Superior Court Case No. GIC835457*
- 24 *Bustamante v. The McGraw-Hill Companies,*  
25 *Inc., et al., Los Angeles Superior Court Case*  
26 *No. BC285598*

1 This matter is before the Court on the motion for final class certification and final  
2 approval of a proposed class action settlement (the "Settlement") of the above-captioned cases  
3 (the "Class Actions") entered into between, on the one hand, plaintiffs A.L. Gilbert Company,  
4 Mark and Susan Benscheidt dba Madera Wash Depot and Countrywood Laundromat, David C.  
5 Brown, H & M Roses, Inc., Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc.,  
6 Dan L. Older, Craig Podesta, Shanghai 1930 Restaurant Partners, L.P., Michael and Haleema  
7 Silverman, Tom and Lynette Stevenson, Timothy Engeln, Inc. dba Team Design, Laurence  
8 Uyeda, and Vittice Corporation (collectively, the "Class Representatives"), individually and on  
9 behalf of the Settlement Classes (as defined below), and, on the other hand, defendants Dynegy  
10 Inc., Dynegy Marketing and Trade, Dynegy Power Marketing, Inc. and West Coast Power LLC  
11 (collectively, "Dynegy," and, together with the Class Representatives, the "Settling Parties"),<sup>1</sup> as  
12 set forth in the Settlement Agreement attached hereto as Exhibit A.

13 By the Order Granting Preliminary Approval of Class Action Settlements entered on  
14 September 1, 2006 (the "Preliminary Approval Order"), the Court: (a) conditionally certified the  
15 Settlement Class and Subclasses defined therein (collectively, the "Settlement Classes"); (b)  
16 appointed the Class Representatives and their counsel ("Class Counsel") to represent the  
17 Settlement Classes, as set forth therein; (c) granted preliminary approval to the Settlement; and  
18 (d) ordered that notice of the Settlement be disseminated to the Settlement Classes, as directed  
19 therein, on or before October 11, 2006.

20 In compliance with the Preliminary Approval Order, notice was published and/or mailed  
21 to the members of the Settlement Classes on or before October 11, 2006.

22 On December 11, 2006, the Settling Parties appeared before the Court at the final  
23 approval and fairness hearing (the "Fairness Hearing"), represented by their respective attorneys.  
24 An opportunity to be heard was given to all persons requesting to be heard. The Court has  
25 reviewed and considered all of the pleadings filed in connection therewith, and all of the

26  
27 <sup>1</sup> The Settlement was also entered into by the following Dynegy affiliates not named as  
28 defendants in the Master Class Action Complaint: Dynegy Holdings Inc., Cabrillo Power I LLC,  
Cabrillo Power II LLC, El Segundo Power I LLC, El Segundo Power II LLC, Long Beach  
Generation LLC, and WCP (Generation) Holdings LLC.

1 arguments and evidence presented at the Fairness Hearing in support of the Settlement.

2 In addition to the foregoing, on November 6, 2006, Dynegy noticed, filed, and served a  
3 Motion for Determination of Good Faith Settlement (the "Good Faith Motion"), pursuant to  
4 California Code of Civil Procedure Section 877.6(a)(1). No nonsettling party, or any other  
5 alleged co-tortfeasor or co-obligor, has filed an opposition to the Good Faith Motion.

6 The entire matter of the proposed Settlement having been duly noticed, and having been  
7 fully considered by the Court,

8 IT IS HEREBY ADJUDGED, ORDERED, AND DECREED that:

9 1. This Court has jurisdiction over the claims of the members of the Settlement  
10 Classes asserted in this coordination proceeding, personal jurisdiction over the Settling Parties  
11 (including the members of the Settlement Classes), and subject matter jurisdiction to approve the  
12 Settlement.

13 2. Notice given to the members of the Settlement Classes was reasonably calculated  
14 under the circumstances to apprise the class members of the pendency of the Class Actions, all  
15 material elements of the proposed Settlement, and their opportunity to exclude themselves from,  
16 to object to, or to comment on the Settlement and to appear at the Fairness Hearing. The notice  
17 was reasonable and the best notice practicable under the circumstances; was due, adequate and  
18 sufficient notice to all class members; and complied fully with the laws of the State of California,  
19 the California Code of Civil Procedure, the California Rules of Court, due process, and any other  
20 applicable statutes or rules. A full opportunity has been afforded to the members of the  
21 Settlement Classes to participate in the Fairness Hearing, and all members of the Settlement  
22 Classes and other persons wishing to be heard have been heard. Accordingly, the Court  
23 determines that all members of the Settlement Classes are bound by this Judgment, Final Order,  
24 and Decree.

25 3. The Court finds that the applicable requirements of the California Code of Civil  
26 Procedure section 382 and California Rules of Court 1859 and 1860 have been satisfied with  
27 respect to the Settlement Classes and the Settlement.

28 4. On September 1, 2006, this Court conditionally certified a Settlement Class,

1 defined as:

2 All individuals and entities who between January 1, 1999 and  
3 December 31, 2002, inclusive (the "Class Period"), directly or  
4 indirectly purchased natural gas in California and/or at the  
5 California border for use. Excluded from the Settlement Class are:  
6 individuals and entities who purchased natural gas for resale or for  
7 generation of electricity for the purpose of resale (but solely with  
8 respect to the extent of such purchases and not with respect to other  
9 purchases); Defendants and their predecessors, affiliates,  
10 subsidiaries, officers, and directors; federal, state, and local  
11 governments and governmental agencies; any and all judges and  
12 justices assigned to hear any aspect of this litigation, along with  
13 their spouses and any minor children residing in their households;  
14 any persons within the third degree of relationship of any judge or  
15 justice assigned to hear any aspect of this litigation.

16 In addition, on that same date, this Court conditionally certified two Settlement Subclasses,  
17 defined as:

18 **The Core Natural Gas Subclass**

19 All individuals and entities that purchased natural gas for use from  
20 any source and were or would otherwise have been generally  
21 classified as "core" or "core subscription" natural gas customers by  
22 one or more of California's natural gas utilities, including, without  
23 limitation, Southern California Gas Company, Pacific Gas &  
24 Electric Company, San Diego Gas & Electric Company, City of  
25 Long Beach Energy Department, and Southwest Gas Corporation,  
26 at any time between January 1, 1999 and December 31, 2002.

27 **The Non-Core Natural Gas Subclass**

28 All individuals and entities that purchased natural gas for use from  
any source and were or would otherwise have been generally  
classified as "non-core" natural gas customers (excluding "core  
subscription" customers) by one or more of California's natural gas  
utilities, including, without limitation, Southern California Gas  
Company, Pacific Gas & Electric Company, San Diego Gas &  
Electric Company, City of Long Beach Energy Department, and  
Southwest Gas Corporation, or who otherwise purchased natural  
gas pursuant to contract, at any time between January 1, 1999 and  
December 31, 2002.

5. Membership in the two Subclasses is subject to the same limitations and  
exclusions as the Settlement Class, including that purchases must have been made by members of  
these subclasses for use and not for resale or generation of electricity for the purpose of resale,  
and the exclusion of governmental entities. Settlement Class members who switched from "core  
subscription" or "core elect" status to "non-core" natural gas status during the class period (or

1 vice-versa) are members of both the Core Natural Gas Subclass and the Non-Core Natural Gas  
2 Subclass.

3 6. The Court appointed the Class Representatives as representatives of the Settlement  
4 Class. The Court appointed Class Representatives Mark and Susan Benscheidt, David C. Brown,  
5 Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc., Dan L. Older, Shanghai 1930  
6 Restaurant Partners, L.P., Michael and Haleema Silverman, Tom and Lynette Stevenson, Timothy  
7 Engeln, Inc. dba Team Design, Laurence Uyeda and Vittice Corporation as representatives of the  
8 Core Natural Gas Subclass. The Court appointed Class Representatives A.L. Gilbert Company  
9 and H&M Roses, Inc. as representatives of the Non-Core Natural Gas Subclass. The Court  
10 appointed the law firm of Lieff, Cabraser, Heimann & Bernstein, LLP as Co-Lead Settlement  
11 Class Counsel and Lead Settlement Subclass Counsel for the Core Natural Gas Subclass. The  
12 Court appointed the law firm of Engstrom, Lipscomb & Lack as Co-Lead Settlement Class  
13 Counsel and Lead Settlement Subclass Counsel for the Non-Core Natural Gas Subclass. The  
14 Court appointed the members of the Plaintiffs' Executive Committee as additional Settlement  
15 Class Counsel.

16 7. California Code of Civil Procedure section 382 provides for class certification  
17 when there is an ascertainable class and a well defined community of interest among class  
18 members. The Settlement Class and each Subclass continue to meet this standard for class  
19 certification, so that final certification of the Settlement Class and Subclasses is appropriate.  
20 There have been no objections to the propriety of class certification.

21 8. The Court finds for the purposes of settlement only that: (i) the members of the  
22 Settlement Class are so numerous that joinder would be impractical; (ii) there is a commonality of  
23 interests among the members of the Settlement Class; (iii) there are questions of law and fact that  
24 are common to the Settlement Class, and the common questions predominate over individual  
25 questions; (iv) the Class Representatives' claims are typical of the claims of absent Settlement  
26 Class members; and (v) the Class Representatives and Co-Lead Settlement Class Counsel will  
27 fairly and adequately represent the interests of the absent Settlement Class members.

28 9. The Court finds for the purposes of settlement only that: (i) the members of the

1 Core Natural Gas Subclass are so numerous that joinder would be impractical; (ii) there is a  
2 commonality of interests among the members of the Core National Gas Subclass; (iii) there are  
3 questions of law and fact that are common to the Core National Gas Subclass, and the common  
4 questions predominate over individual questions; (iv) the claims of plaintiffs Mark and Susan  
5 Benscheidt, David C. Brown, Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc.,  
6 Dan L. Older, Shanghai 1930 Restaurant Partners, L.P., Michael and Haleema Silverman, Tom  
7 and Lynette Stevenson, Timothy Engeln, Inc. dba Team Design, Laurence Uyeda, and Vittice  
8 Corporation are typical of the claims of absent Core Natural Gas Subclass members; and (v) these  
9 Class Representatives and Lead Settlement Subclass Counsel will fairly and adequately represent  
10 the interests of the absent Core Natural Gas Subclass members.

11 10. The Court finds for the purposes of settlement only that: (i) the members of the  
12 Non-Core Natural Gas Subclass are so numerous that joinder would be impractical; (ii) there is a  
13 commonality of interests among the members of the Non-Core Natural Gas Subclass; (iii) there  
14 are questions of law and fact that are common to the Non-Core Natural Gas Subclass, and the  
15 common questions predominate over individual questions; (iv) the claims of plaintiffs A.L.  
16 Gilbert Company and H&M Roses, Inc. are typical of the claims of absent Non-Core Natural Gas  
17 Subclass members; and (v) these Class Representatives and Lead Settlement Subclass Counsel  
18 will fairly and adequately represent the interests of the absent Non-Core Natural Gas Subclass  
19 members.

20 11. Accordingly, pursuant to California Code of Civil Procedure section 382, the  
21 Court makes final its conditional certification of the Settlement Class and each of the two  
22 Subclasses for settlement purposes only, and confirms the appointment of the Class  
23 Representatives and Class Counsel to represent the Settlement Classes, as set forth above.

24 12. The following persons and entities not represented by their own counsel in this  
25 coordination proceeding timely requested exclusion: Southern California Edison Company,  
26 Pacific Gas and Electric Company,; Sierra Pacific Resources (on behalf of itself and related  
27 entities); Wayne E. Williams, James H. Bailey, E. & J. Gallo Winery, Gallo Glass Company, and  
28 BP Energy Company. Each of these entities (and, with respect to Sierra Pacific Resources, the

1 additional entities identified in its request for exclusion) are excluded from the Settlement  
2 Classes.

3 13. The following persons and entities, represented by their own counsel in this  
4 coordination proceeding, timely filed requests for exclusion: County of San Diego, County of  
5 San Mateo, County of Santa Clara, County of Alameda, City and County of San Francisco, City  
6 of Los Angeles, City of San Diego, Sacramento Municipal Utility District, The Board of Trustees  
7 of The California State University, The Regents of the University of California, School Project  
8 for Utility Rate Reduction (SPURR),; ABAG Publicly Owned Energy Resources; California Steel  
9 Industries, Inc.; Hanson Permanente Cement, Inc.; TAMCO; Vista Metals Corp.; Nurserymen's  
10 Exchange, Inc.; Owens-Brockway Glass Container, Inc.; PABCO Building Products, LLC and  
11 Basalite Concrete Products, LLC. Each of these entities are excluded from the Settlement  
12 Classes.

13 14. There have been no objections to the Settlement. The Coachella Valley Taxi  
14 Owners Association has filed a comment in support of the Settlement.

15 15. The Court hereby grants final approval to the Settlement and finds that it is fair,  
16 reasonable, and adequate, and in the best interests of the Settlement Classes.

17 16. The Settlement is entitled to a presumption of reasonableness, as it was negotiated  
18 at arms'-length by experienced and well-prepared Class Counsel, and there have been no  
19 objections to the Settlement. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2001)  
20 85 Cal. App. 4th 1135, 1151.

21 17. The Settlement is also fair, reasonable, and adequate, as measured by the relevant  
22 criteria. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801 (listing and applying  
23 factors).

24 18. Prior to entering into the proposed Settlement, Class Counsel, who have extensive  
25 experience in class action and antitrust litigation, were well-informed about the potential risks and  
26 rewards of continued litigation, having conducted extensive discovery and investigation, having  
27 consulted extensively with experts concerning Dynegy's potential liability and Settlement Class  
28 members' damages, having overcome numerous pleading challenges, and having moved for



1 certification of a litigation class. In a case as complex as this, continued litigation presents  
2 serious risks for the Settlement Class at trial, and further risks on appeal, as the survival of any  
3 judgment rendered in the Settlement Class' favor may turn on appellate resolution of a number of  
4 legal defenses raised by defendants, such as federal preemption and the filed-rate doctrine.

5 19. Finally, the reaction of Settlement Class members strongly favors settlement  
6 approval. While the Settlement Class contains millions of members, only a handful have opted-  
7 out of the Settlement Class, and none have objected to the Settlement.

8 20. The allocation of Settlement proceeds as between the Core Natural Gas Subclass  
9 and the Non-Core Natural Gas Subclass, as set forth in the notices disseminated to the Settlement  
10 Class, is also hereby approved as fair, adequate, and reasonable.

11 21. Accordingly, the Settlement Agreement, attached hereto as Exhibit A, is approved  
12 and made a part of this judgment as if fully set forth herein, and shall have the full force and  
13 effect of an order of this Court. The parties shall consummate the Settlement Agreement  
14 according to its terms.

15 22. Under California Code of Civil Procedure sections 578, 579, and 664.6, the Court,  
16 in the interests of justice, there being no just reason for delay, expressly directs the Clerk of the  
17 Court to enter this Judgment, Final Order, and Decree, and hereby decrees, that upon entry, it be  
18 deemed as a final judgment and appealable with respect to all claims asserted by members of the  
19 Settlement Classes against Dynegy.

20 23. In addition to the effect of this final judgment, the Released Parties (as defined in  
21 the Settlement Agreement) are released and forever discharged by the Class Representatives and  
22 by each and every member of the Settlement Class from any and all claims, causes of action,  
23 demands, rights, actions, suits and requests for equitable, legal and administrative relief of any  
24 kind or nature whatsoever ("Claims") arising from or relating to (i) the facts alleged in any of the  
25 Class Actions, including without limitation any and all Claims that were or could have been  
26 asserted against Dynegy under state and federal antitrust laws, unfair competition statutes and  
27 common law principles, unjust enrichment principles, or any other common law, statutory or  
28 equitable theory; and (ii) the purchase of natural gas during the Class Period, including but not

1 limited to the purchase of physical natural gas and/or any transaction relating to, dependent upon  
2 or derivative of the price of natural gas. Notwithstanding the foregoing, this final judgment does  
3 not release any Claims that any member of the Settlement Class may have against any Released  
4 Party based solely on the performance or non-performance of the parties under a contract between  
5 the particular Settlement Class member and Released Party, but only to the extent such claim is  
6 not based upon and does not depend upon any contention or proof that the rate or price charged  
7 was affected in any way by any improper conduct relating to the price of natural gas. To the  
8 extent any such contract-based claims would rely upon any conduct or matters released in this  
9 paragraph, they are hereby waived, released and extinguished. Notwithstanding anything to the  
10 contrary contained herein, this final judgment does not release a Released Party from any Claims  
11 that any member of the Settlement Class classified as a "core customer" by the California Public  
12 Utilities Commission may have against the Released Parties arising out of or relating to derivative  
13 transactions. However, the Released Parties shall retain whatever legal rights they may have to  
14 assert a set-off or other defense to such a Claim based upon any monies paid under this  
15 Settlement. This final judgment does not release any Claim against any entity other than the  
16 Released Parties, or any Claim or liability as between any Settlement Class member and any other  
17 Settlement Class member.

18       24. To the fullest extent permitted by law, the Class Representatives, on behalf of  
19 themselves and each and every member of the Settlement Class, expressly waive the benefits of  
20 any statutory provision or common law rule that provides, in sum or substance, that a release does  
21 not extend to claims which the releasor does not know or suspect to exist in its favor at the time  
22 of executing the release, which if known by it, would have materially affected its settlement with  
23 the other party. In particular, but without limitation, the Class Representatives, on behalf of  
24 themselves and each and every member of the Settlement Class, understand the provisions of  
25 California Civil Code Section 1542, which provides:

26               A general release does not extend to claims which the creditor does  
27               not know or suspect to exist in his or her favor at the time of  
28               executing the release, which if known by him or her must have  
                  materially affected his or her settlement with the debtor.

1 The Class Representatives, on behalf of themselves and each and every member of the Settlement  
2 Class, with the advice of counsel, have agreed that (i) the provisions of California Civil Code  
3 Section 1542 are hereby knowingly and voluntarily waived and relinquished, and (ii) the  
4 provisions of all similar federal or state laws, rights, rules, or legal principles of any other  
5 jurisdiction, to the extent that they are found to be applicable herein, also are hereby knowingly  
6 and voluntarily waived and relinquished. Notwithstanding the foregoing waiver of California  
7 Civil Code Section 1542, the releases set forth in this final judgment are specific to the matters set  
8 forth in the releases and are not intended to constitute general releases as to all claims, or  
9 potential claims, between the releasing and Released Parties.


10 25. Without affecting the finality of this Judgment, Final Order, and Decree, the  
11 Settling Parties, including the members of the Settlement Classes, have submitted to the exclusive  
12 and continuing jurisdiction of this Court, and this Court reserves exclusive and continuing  
13 jurisdiction over the Settlement, including the administration and consummation of the  
14 Settlement.

15 26. Nothing in this Order shall be construed to expand the obligations of Dynegy  
16 under the Settlement Agreement or to impose obligations on Dynegy other than those contained  
17 in the Settlement Agreement.

18 27. As to Dynegy, the Class Actions are hereby dismissed with prejudice, and, except  
19 as provided in the Settlement Agreement, without costs.

20 28. The Court hereby GRANTS the Good Faith Motion, and determines that the  
21 settlement entered into in this case was made in good faith for the purposes of California Code of  
22 Civil Procedure Sections 877 and 877.6.

23  
24 SO ORDERED, this 11 day of December, 2006.

25  
26   
27 Hon. Ronald S. Prager  
28 Coordination Trial Judge  
Superior Court of the State of California